IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2080 OF 2006

Birla Global Finance Ltd.,)
having its office at Appejay)
House, 2nd Floor, S.B.Road,)
Fort, Bombay 400 001, through)
its Authorised Representative)
Shri H.M.Purohit, Age: 68 yrs) ...Applicant

Versus

1. Sudhir R. Mardia,Director,)
Mardia Copper Products)
Limited, Erani Road,)
Village Budasan, Kadi,)
Gujarat 382 715)

2. Sunil R. Mardia, Director,)
Mardia Copper Products)
Limited, Mardia House,)
83 Kika Street, Gulal Wadi)
Bombay 3)

3. The State of Maharashtra) ...Respondents

Mrs Kasturi Savi i/by Shri S.S.Parab for the Applicant.

Shri Anil Agarwal for the Respondent Nos.1 and 2.

Shri Y.M.Nakhwa, A.P.P for the State.

CORAM : A. S. OKA, J.
DATE : NOVEMBER 15, 2006.

ORAL JUDGMENT:

1. Rule. The learned Advocate for the first and the second Respondents waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The first and the second Respondents are arraigned as accused in a complaint filed by the Applicant under section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate issued process on the said complaint. A Revision Application was filed by the first and the second Respondents challenging the order issuing process passed by the learned Magistrate and also for challenging the order dated 04th October, 2005 by which the Application for discharge filed by the said Respondents was rejected. By the impugned order dated 29th November, 2005 the learned Additional Sessions Judge disposed of the said Revision Application filed by the first and second Respondents by passing the following order:

> "Heard the Advocates.
>
> Perused the averments made in complaint. At this stage, Mr. Agarwal states that, he not pressing for prayer (a) of the revision. As per sec.210 of Cr.P.C., Both the cases can be clubbed together before on court.

In view thereof, revision shall stands disposed of in the following manner:

1. The records and proceedings of case No.332/SS/2005 pending before C.R. 38 Ballard Pier and be heard along with case no.2990/SS/2005, which is pending before 33rd Court.

2. Mr. Agarwal is intimate to the complainant/respondent about today's order within one week from today.

3. Save and except this order no other order in this revision. Revision stands disposed of".

3. One of the submissions made by the Advocate for the Applicant is that the order impugned was passed without notice to the Applicant though the Applicant was impleaded as the first Respondent in the Revision Application. The learned counsel appearing for the first and the second Respondents fairly states that by setting aside the impugned order, the Revision

Application be ordered to be heard afresh after hearing the Applicant.

4. In view of the statement made by the learned counsel for the first and the second Respondents, this Application can be disposed of by passing an order of remand.

5. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 29th November, 2005 passed by the learned Additional Sessions Judge is quashed and set aside and Criminal Revision Application No.1571 of 2005 is restored to the file.

(ii) The Applicant and the first and second Respondents are directed to remain present before the learned Sessions Judge, Mumbai on 11th December, 2006 at 11.00 a.m. The learned Judge may himself take up the Revision Application or may transfer it to any other Judge considering the administrative convenience.

(iii) The said Revision Application shall be decided on its own merits after hearing the Applicant.

(iv) The Revision Application shall be decided as expeditiously as possible and preferably on or before 31st March, 2007.

(v) Till the final disposal of the Revision Application, the proceedings of Case No.332/SW/2005 pending before the 38th Court of learned A.C.M.M. Ballard Pier, Mumbai and the proceedings of Case No.2990/SS/2005 pending before 33rd Court, Ballard Pier, Mumbai will remain stayed.

(vi) All contentions of the parties in the pending revision Application are expressly kept open.

(vii) Parties and concerned court to act upon an authenticated copy of this order.

(viii) Writ to be sent immediately.

JUDGE